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THE COURTHOUSE PERSONNEL DEPARTMENT

EXECUTIVE CHALLENGES PLAN ADMINISTRATOR'S

SEVERANCE PLAN DECISION IN EMPLOYER'S FAVOR

Campbell Mithun is an advertising, marketing and promotions agency which had offices in California, New York, Minneapolis and Chicago. On March 31, 2005, it sold its Chicago office ("Sale") to GreenHouse Communications, Inc. ("GreenHouse"). At the time of the Sale, Mark Williams' title was Senior Vice President, Account Management and Development in Campbell Mithun's Chicago Office. His salary was \$167,000 per year.

The purchase agreement executed in connection with the Sale provided, among other things, that GreenHouse would offer comparable positions to each Chicago Campbell Mithun employee at the same or higher salary. Mr. Williams was offered the position of Senior Vice President, Account Management, with a salary of \$169,000. Mr. Williams declined this offer and ceased working for the company after March 31, 2005, and demanded benefits from the Interpublic Severance Pay Plan. (Campbell Mithun was owned after the Sale by The Interpublic Group of Companies, and Campbell Mithun employees thus were eligible to participate in the Interpublic Severance Pay Plan ("Plan")). The Plan administrator rejected his request for benefits from the Plan.

The Plan specifically provided that an employee would not be entitled to severance benefits if his employment was terminated as the result of a sale of the business and the employee was offered a "comparable position at a successor employer at the same or a higher salary."

Section 4.4 of the Plan provided as follows:

Merger or Sale. Notwithstanding anything herein to the contrary, an Employee shall not be eligible to receive a severance benefit pursuant to the Plan if (a) his employment with an Employer is terminated as the result of a Sale of assets, merger, liquidation, re-organization, or disposition and (b) ... (ii) the Employee is offered a comparable position at a successor employer at the same or a higher salary as of the closing date. After the occurrence of an event described in the preceding sentence (a "triggering event"), neither the Employer nor the successor employer shall be required to pay any benefit pursuant to the Plan with respect to Service completed before the triggering event to any Employee described in this Section 4.4.

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The Plan also authorized its administrator to interpret the Plan, make findings of fact, and decide all matters arising thereunder, including the right to remedy possible ambiguities, inconsistencies or omissions.

Williams asked the Court to review the Plan administrator's decision because, he alleged, the plan administrator had a conflict of interest: because the Plan was unfunded, any decision in an employee's favor comes from and drains the employer's – Interpublic's – assets and, as a result, the administrator (which usually serves at the pleasure of the employer) will be inclined to shade decisions in the employer's favor.

The Plan was an employee benefit plan that is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). Under ERISA, when a plan administrator has discretion, as Interpublic's Plan administrator clearly had, a court reviews the plan administrator's decision under a standard characterized as "deferential." Under this standard, a court will not overturn a plan administrator's decision as long as (1) "it is possible to offer a reasoned explanation, based on the evidence, for a particular outcome, (2) the decision "is based on a reasonable explanation of relevant plan documents," or (3) the administrator "has based its decision on a consideration of the relevant factors that encompass the important aspects of the problem." For a decision to be deemed reasonable, a plan administrator must be found to have considered the factors that are relevant to the important aspects of the decision, and articulated an explanation that makes a rational connection between the issue, the evidence, the text and the decision made.

This Court said the Seventh Circuit (where Illinois is located) has specifically rejected the argument of a plan being unfunded as a basis for establishing a conflict of interest. The Court referred to the following holding in another case: "The impact on a company's welfare of granting or denying benefits under a plan will not be sufficiently significant as to threaten the administrator's partiality."

Notwithstanding the finding of no conflict, the Court, applying the deferential standard, addressed the issues of whether the position offered to Williams was "comparable" and whether the salary he was offered was the same or higher.

The Court said the Plan was justified in finding that Williams was offered a comparable position. At Campbell Mithun, Williams supervised client accounts and had other account executives under him. GreenHouse offered him the same role. Williams said that the position at GreenHouse would have been inferior because it planned to operate an independent agency in Chicago, while Campbell Mithun operated internationally (Williams said he would have lost prestige as a result), and that GreenHouse works for smaller clients than Campbell Mithun does. This Court said the question under the Plan was whether the offered *position* was comparable, not whether the employer was continuing operations unchanged.

The Court also found that the Plan was justified in determining that Williams was offered a position "at the same or higher salary" than the one enjoyed before the Sale. \$169,000 a year was greater than his current salary, albeit by an insignificant amount. The Court rejected Williams' request that it consider the total value of his compensation package, including all fringe benefits. The Court said the Plan said "salary" rather than "compensation"; some plans require a comparison of fringe benefits as well as salary, but this Plan limited the comparison to salary alone.

Please do not hesitate to call us if you have any question about employee benefit plans or the impact of ERISA thereon.

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